TRW, United Greenfield Division *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW. Case 10-CA-18053

September 17, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on April 5, 1982, by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), herein called the Union, and duly served on TRW, United Greenfield Division, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint and notice of hearing on May 28, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on February 25, 1982, following a Board election in Case 10-RC-11258, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about March 24, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. Thereafter, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On June 23, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on July 2, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a memorandum in opposition to the General Counsel's motion as its response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent admits the Union's request and its refusal to bargain but attacks the validity of the Union's certification based on its challenges to three ballots cast in, and certain of its objections to, the election in the underlying representation proceeding. Respondent further asserts as a defense that there has been a substantial change in its work force since the election and that, therefore, it is questionable whether representation by the Union reflects the choice of Respondent's current employees.

Review of the record herein, including the record in Case 10-RC-11258, shows that a second election was conducted pursuant to the Board's Decision, Order, and Direction of Second Election issued September 28, 1979,[2] as corrected by the Board's unpublished order dated October 22, 1979. The second election resulted in a vote of 209 for, and 209 against, the Union, with three challenged ballots, a number sufficient to affect the results of the election. Thereafter, Respondent filed timely objections to the election, alleging in substance that (1) the Union made substantial and material misrepresentations concerning wages and benefits of employees it represented at other TRW and non-TRW facilities, (2) the Union created an atmosphere of fear and coercion among its employees by intimidation and threats of violence; (3) the Union's election observers, by determining names of eligible voters not voting, subjected eligible voters to harassment and infringed on their right to remain anonymous; and (4) the Union interfered with the "laboratory conditions" required by the Board for the election. Respondent also challenged three ballots cast by employees who were classified as dispatchers, contending that they were supervisors within the meaning of the Act.

After investigation, the Acting Regional Director issued his Report on Objections and Challenged Ballots in which he recommended that the objections be overruled in their entirety, that the challenged ballots be opened and counted, and that the

[1] Official notice is taken of the record in the representation proceeding, Case 10-RC-11258, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] 245 NLRB 1135.

appropriate certification be issued. Thereafter, Respondent filed exceptions to the Acting Regional Director's report. On April 14, 1980, the Board, having considered the Acting Regional Director's report, Respondent's exceptions thereto, and the entire record, adopted the findings and recommendations of the Acting Regional Director with respect to the objections. However, the Board found that Respondent's exceptions raised substantial and material issues of fact as to the supervisory/-managerial or confidential status of the dispatchers and remanded for hearing on the challenged ballots. Subsequently, Respondent filed a motion for reconsideration. By unpublished order, dated June 3, 1980, the Board ordered that a hearing also be held with respect to Objections 1 and 2. Thereafter, these matters were consolidated with a related unfair labor practice proceeding for hearing before an administrative law judge. Following the hearing, the Administrative Law Judge issued his Decision in which he recommended that the objections be overruled. He further recommended that the challenges to the three ballots be overruled and that the ballots be opened and counted and that the appropriate certification be issued based on the revised tally. On February 10, 1982, the Board issued its Decision and Order adopting with minor modifications the Administrative Law Judge's Decision.[3] Thereafter, a revised tally of ballots issued which showed 212 votes cast for, and 209 against, the Union. On February 25, 1982, the Union was certified as the exclusive bargaining representative of Respondent's employees. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

In further opposition to the Motion for Summary Judgment, Respondent makes the unsupported assertion that there has been a substantial change "in [its] workforce [sic]" since the last election. Noting that the election took place over 2 years prior to this proceeding, and was decided by less than 1 percent of the number of voters cast, Respondent contends that there has not been a fair test of the current employees' desires to be represented by the Union. We find this contention without merit. Thus, even assuming, *arguendo*, that there has been a substantial turnover among unit employees since the election, it is well established that postelection turnover is an insufficient ground to set aside an election. *A. G. Parrott Company*, 237 NLRB 191 (1978), enforcement denied on other grounds 630 F.2d 212 (1980); *Henderson Trumbull Supply Corporation*, 205 NLRB 245 (1973).

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is an Ohio corporation with an office and place of business located at Evans, Georgia, where it is engaged in the manufacture of metal drills. During the 12-month period preceding issuance of the complaint, a representative period, Respondent has sold and shipped from its Evans, Georgia, facility goods valued in excess of $50,000 directly to customers located outside the State of Georgia.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

[3] 260 NLRB 73.

[4] See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

All production and maintenance employees employed by the Employer at its 470 Old Evans Road, Evans, Georgia (Augusta), plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On November 15, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 10, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on February 25, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about March 2, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 24, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since on or about March 24, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. TRW, United Greenfield Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its 470 Old Evans Road, Evans, Georgia (Augusta), plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since February 25, 1982, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 24, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing,

employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, TRW, United Greenfield Division, Evans, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees employed by the Employer at it 470 Old Evans Road, Evans, Georgia (Augusta), plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant at Evans, Georgia, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees employed by the Employer at its 470 Old Evans Road, Evans, Georiga (Augusta), plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

TRW, UNITED GREENFIELD DIVISION